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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,210	01/31/2001	John Beeler	00777	4209
26285	7590	05/25/2004	EXAMINER	
KIRKPATRICK & LOCKHART LLP 535 SMITHFIELD STREET PITTSBURGH, PA 15222			ZIMMERMAN, BRIAN A	
			ART UNIT	PAPER NUMBER
			2635	
DATE MAILED: 05/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/773,210	BEELER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Brian A Zimmerman	2635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 January 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                         |                                                                             |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                         | 6) <input type="checkbox"/> Other: _____                                    |

**EXAMINER'S RESPONSE****Status of Application**

In response to the applicant's amendment received on 1/5/04. The examiner has considered the new presentation of claims and applicant arguments in view of the disclosure and the present state of the prior art. And it is the examiner's position that claims 1-20 remain unpatentable for the reasons set forth in this office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

1. Claims 1-6, 9-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Spaling (2002/0077111).

Spaling shows a system for monitoring congestion in a cellular communication system. The system of Spaling includes a switch 12 and cell sites (16,18,20..) in communication with the switch. The system of Spaling also includes a monitoring module in communication with the switch for monitoring occurrences of congestion in the system. Since congestion in the switch to cell link is intrinsically related to the congestion between the cell station and the mobile, if the cell-mobile link is monitored for congestion this result is also indicative of switch-cell station congestion. The monitoring module provides a message and possibly corrective action in response to the measurement of

congestion being greater than a threshold. See paragraph 46-46. The measurement is also measured against time to determine if the rate of congestion exceeds a threshold.

***Claim Rejections - 35 USC § 103***

2. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spaling as applied to claims 1,3 and 4 above, and further in view of what is common in the art.

The monitoring module provides a message in response to the measurement of congestion being greater than a threshold. The examiner takes official notice that email and pager notification are common messaging techniques used in the art of alarm reporting.

***Response to Arguments***

Applicant's arguments filed 1/5/04 have been fully considered but they are not persuasive.

The applicant argues that Spaling teaches determining the load condition of a cell but does not monitor for occurrences of paging congestion. First the applicant's specification has not provided a definition of the term paging congestion that excludes the load condition of the cell as one type of paging congestion. The examiner interprets the term paging congestion to be a broad term encompassing the term load condition of the cell. Using this definition, it is clear that Spaling teaches the claimed invention. The applicant attempts to

define the term paging congestion in their response (1/5/04). This interpretation is not supported by the original specification, or any other source and therefore is not a binding definition.

The applicant argues that Spaling does not teach monitoring between the switch and cell site. As stated in the rejection above, congestion in the switch to cell link is intrinsically mathematically related to the congestion between the cell station and the mobile, if the cell-mobile link is monitored for congestion this result is also indicative of switch-cell station congestion. The claim does not state that the measurement occurs on the data between the switch and the cell site, merely that the paging congestion is determined based on some intrinsic desired threshold for that particular link.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian A Zimmerman whose telephone number is 703-305-4796. The examiner can normally be reached on Off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Horabik can be reached on 703-305-4704. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brian A Zimmerman  
Primary Examiner  
Art Unit 2635

BAZ